

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**JAMES McALPHIN
ADC #88328**

PLAINTIFF

v.

No. 5:18-cv-213-DPM-JTK

**KENNETH HOLDER,* Doctor, ADC,
East Arkansas Regional Unit; CORRECT
CARE SOLUTIONS LLC; and RONALD
STUKEY, Doctor**

DEFENDANTS

ORDER

On *de novo* review, the Court adopts Magistrate Judge Kearney's partial recommendation, *No.* 73, and overrules McAlphin's objections, *No.* 74. FED. R. CIV. P. 72(b)(3). McAlphin believes that attempting to exhaust his remedies against CCS—or for a broader swath of time against Holder and Stukey—would have been futile. But that belief isn't enough to excuse the statutory exhaustion requirement. *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001); *Lyon v. Vande Krol*, 305 F.3d 806, 809 (8th Cir. 2002). The motion for partial summary judgment, *No.* 59, is therefore granted. McAlphin's claims against CCS are dismissed without prejudice. His claims against Holder and Stukey are limited to

* The Court directs the Clerk to update Holder's and Stukey's names on the docket.

those exhausted in Grievances VSM 17-1242 and VSM 17-1718. № 61-1
at 92-95 & 99-101.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

12 September 2019